APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,948	10/30/2003	Mark Henry Butler	300202359-2	6277

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EXAMINER
JAKOVAC, RYAN J

ART UNIT	PAPER NUMBER
2145	

NOTIFICATION DATE	DELIVERY MODE
06/12/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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	Application No.	Applicant(s)
	10/695,948	BUTLER, MARK HENRY
Office Action Summary	Examiner	Art Unit	
	RYAN J. JAKOVAC	2145	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS,
WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>22 April 2008</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-5,10-13,19-40 and 49-52</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-5, 10-13,19-40 and 49-52</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>30 October 2003</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☒ All b)☐ Some * c)☐ None of:

    1.☐ Certified copies of the priority documents have been received.

    2.☐ Certified copies of the priority documents have been received in Application No. _____.

    3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
       application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO/SB/08)
   Paper No(s)/Mail Date <u>05/30/2008</u>.

4)☐ Interview Summary (PTO-413)
   Paper No(s)/Mail. Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

1.   Applicant has elected claims 1-5, 10-13, 19-40, and 49-52.

Claim Rejections - 35 USC § 102

2.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on
>
> sale in this country, more than one year prior to the date of application for patent in the United States.

3.   Claims 1-5, 10-13, 19-40, 49-52 rejected under 35 U.S.C. 102(b) as being anticipated by

US 2002/0032754 to Logston et al (hereinafter Logston).

        Regarding claim 1, Logston teaches a networkable resource server adapted in use to serve

out resources to client devices of a network (Logston, abstract, transfer of device resource and

configuration information, distribution of entity components, also, paragraph [0037], paragraph

[0042-0043], server serves resources to client, also, paragraph [0055], client query to server. Fig.

1, client server relationship.), the server having delivery context aware activity software which

when run on a processor of the server causes a report to be produced containing data related to

delivery context aware requests for resources received by the server (Logston, paragraph [0046],

server contains database of configuration information relating to client devices, See at least

paragraphs [0048-0049], [0052], [0059], [0061], [0082].).

Regarding claim 2, 20, 24, Logston teaches a server and computer program product

according to claim 1 and 19 adapted to transmit the report externally of the server to another

processor (Logston, paragraph [0048], [0062]. information sent to external and remote

computers. See also paragraph [0082]).

Regarding claim 3, 4, 10, 19, 22, Logston teaches a server and computer program product

according to claim 1 and 19 in which there is provided a data log held in a data log memory, the

data log being adapted to store data on activity of the server, including information on delivery

context aware activity (Logston, paragraph [0046], server contains database of configuration

information relating to client devices, See at least paragraphs [0048-0049], [0052], [0059],

[0061], [0082].), and wherein the delivery context aware activity software is adapted to

interrogate the data log to obtain the data related to delivery context aware requests for resources

received by the server (Logston, paragraph [0082], statistics calculated and stored in database.).

Regarding claim 4, 21, Logston teaches a server and computer program product

according to claim 1 and 20 adapted proactively to send out said report onto the network to

which the server is connected (Logston, paragraphs [0048-0049], [0062].).

Regarding claim 5, Logston teaches a server according to claim 1 wherein the report

relates to a plurality of context delivery aware requests for resources.

Regarding claim 11, 23, 26, 27, 28, Logston teaches a method and computer program product according to claim 10, 19, 24, 26 comprising, responsive to said assessment, modifying a cache reference profile memory (Logston, paragraph [0052], addition, modification, and removal of profile records.).

Regarding claim 12, 13, 25, 29, 39, 40 Logston teaches a method and computer program product according to claim 10, 19, 24, and 26 comprising, responsive to said assessing, seeking a reference profile from a different reference profile repository to that from which the server has previously sought the reference profile (Logston, [0048-0051], profile information acquired from slave portion and client portion, see also paragraph [0081].).

Regarding claim 30, Logston teaches the computer program product according to claim 19 adapted to evaluate whether the server successfully retrieves reference profiles (Logston, [0059].).

Regarding claim 31, Logston teaches the computer program product according to claim 19. Logston discloses monitoring usage statistics and profiling information in paragraphs [0046] and [0082]. Logston does not expressly disclose monitoring the frequency of deletes in a reference profile cache of the server. However, these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of

patentability. See *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include the nonfunctional descriptive material with the claimed invention because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the descriptive material does not patentably distinguish the claimed invention.

Regarding claim 32, Logston teaches the computer program product according to claim 19 adapted to evaluate the level of usage of reference profiles in a reference profile cache of the server (Logston, paragraph [0046], [0082].).

Regarding claim 33, Logston teaches the computer program product according to claim 32 which is adapted to establish a usage level parameter indicative of the usage of a reference profile for each reference profile (Logston, paragraph [0046], [0082].).

Regarding claim 34, Logston teaches the computer program product according to claim 33. Logston discloses usage statistics in paragraphs [0046], and [0082]. Logston does not expressly disclose wherein said usage level parameter comprises the ratio of the time since a specific reference profile was entered into the profile cache and the number of times the particular reference profile has been retrieved from the cache since it was entered into it.

However, these differences are only found in the nonfunctional descriptive material and

are not functionally involved in the steps recited. Thus, this descriptive material will not

distinguish the claimed invention from the prior art in terms of patentability. See *In re Gulack*,

703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32

USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time

the invention was made to include the nonfunctional descriptive material with the claimed

invention because such data does not functionally relate to the steps in the method claimed and

because the subjective interpretation of the descriptive material does not patentably distinguish

the claimed invention.

Regarding claim 35, Logston teaches the computer program product according to claim

19 adapted to monitor the fraction of devices requesting resources, and/or requests for resources

from the server that are delivery context aware (Logston, paragraph [0046], [0082].).

Regarding claim 36, Logston teaches the computer program product according to claim

19 adapted to monitor whether client devices are using a profile that contains errors (Logston,

[0059].).

Regarding claim 37, Logston teaches the computer program product according to claim

19 adapted to monitor whether a profile references a vocabulary description that either the server

has not been preconfigured to recognize or that it cannot retrieve from a vocabulary reference

(Logston, [0059].).

Regarding claim 38, Logston teaches the computer program product according to claim

19 adapted to monitor the number of profile differences used in an individual request for

resources (Logston, [0046].).

Regarding claim 49, Logston teaches the computer program product which when run on a

processor of a networked resource server, reads delivery context aware related data from a

contact log of said server and processes said data to provide processed acquired data relating to

delivery context aware requests for resources made of the server (Logston, [0081-0082]), and

which computer program product causes said processed acquired data to be transmitted out of a

network port of the sever proactively, without an input trigger signal from outside of the server

(Logston, [0048-0049], [0062].).

Regarding claim 50, Logston teaches a method of trading in network-related usage and/or

performance, and/or network composition and/or device performance information comprising

acquiring said information using software probes on networked resource servers to extract

delivery context awareness-related network activity data relating to activity involving the

particular resource server upon which said probe resides (Logston, [0081-0082]), reporting said

data to a location externally of said resource servers (Logston, [0048-0049], [0062], [0081-

0082]), using reported data to produce said network-related usage and/or performance

information, and trading in said information (Logston, [0081-0082]).

        Regarding claim 51, Logston teaches a networkable resource server adapted in use to

serve out resources to client devices of a network, the server having a resource request

monitoring computer program product which when run on a processor of the server causes a

report to be produced containing data related to or influenced by at least one of the group: (i)

whether the requests for resource contain information relating to the capabilities of a client

device to receive and/or process and/or display data; (ii) the capabilities of the resource server to

output resources having different network transmission and/or data-presentation characteristics;

(iii) network transmission and/or data-presentation characteristics of an intermediary device in

said network disposed in a communication pathway between said client device and said resource

server; (iv) the characteristics of settings of configurable settings of the server, or client device,

or an intermediary device in a communication pathway in the network between the resource

server and the client device (Logston, [0046-0049], [0062], [0081-0082]).

        Regarding claim 52, Logston teaches a networkable resource server adapted in use to

serve out resources to client devices of a network, the server having a resource request

monitoring computer program product which when run on a processor of the server causes a

report to be produced containing data related to or influenced by at least one of the group: (i)

success rate of the server being able to obtain reference profiles; (ii) the level of churn occurring

in a reference profile cache of the server; (iii) the level of usage of individual reference profiles

in a reference profile cache of the server; (iv) the proportion of requests for resource received by

the server that contain delivery context information; (v) errors detected in reference profiles; (vi)

vocabulary in reference profiles that is unrecognised by said server; (vii) the proportion of

requests for resources received by the server that use profile differences; (viii) the proportion of

client devices that make requests of the server for resources that use profile differences; (ix) the

number of intermediary devices in a communication chain from a client device to the server that

influence the delivery context information of the requests; (x) the number of configurable

settings of devices involved in making and communicating a request of the server for resources,

and in returning the requested resources to the client device, that influence the delivery context

information in the request (Logston, [0046-0049], [0059], [0062], [0081-0082]).

Conclusion

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to RYAN J. JAKOVAC whose telephone number is (571)270-5003.

The examiner can normally be reached on Monday through Friday, 7:30 am to 5:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Jason D. Cardone can be reached on (571) 272-3933. The fax phone number for the

organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would

like assistance from a USPTO Customer Service Representative or access to the automated

information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

RJ

/Jason D Cardone/
Supervisory Patent Examiner, Art Unit 2145